

2001-2010

Physical Therapy Liability

We firmly believe that knowledge is the key to patient safety.

Overview

This executive summary provides a sampling of the results found in *Physical Therapy Liability, 2001-2010*.

The full report is divided into three parts. Part 1 includes statistical charts and analysis on 24 topics relating to physical therapists' professional liability claims, plus CNA's risk management recommendations and a self-assessment checklist. Part 2 supplies data on eight topics relating to license protection claims. Part 3 provides readers with 18 highlights from the HPSO 2011 Physical Therapist Work Profile Survey.

To view the full report, self-assessment checklist, risk control recommendations, and the 2011 physical therapist survey, please visit www.hpso.com/PTclaimreport2011.

PART 1

CNA HealthPro Physical Therapy Closed Claims Analysis

(January 1, 2001 – December 31, 2010)

Healthcare Providers Service Organization (HPSO) and CNA are dedicated to educating physical therapy professionals about risk. As part of that effort, we have created a report analyzing physical therapists' professional liability claims over a ten-year period. By sharing the results, we hope to assist physical therapists in identifying and managing the risk exposures most likely to affect their own practice.

Through the HPSO program, CNA continues to be the nation's largest underwriter of professional liability insurance for physical therapy professionals, with more than 70,000 policies in force.

Part 1 focuses on closed claims in order to identify the types of incidents most likely to have resulted in significant consequences for patients, therapists, and practices. We encourage PTs to examine their own clinical practice and policies, discern areas of possible improvement, and dedicate themselves to maximizing patient safety and minimizing risk.

General Data Analysis

ANALYSIS OF PROFESSIONAL LIABILITY CLAIMS BY INSURANCE SOURCE

- The first row in the chart below describes claim results for PTs, PTAs, and other healthcare providers who received their coverage through a PT practice. The second and third rows describe claim results of PTs and PTAs who were individually insured.
- The highest *average paid indemnity* and highest *average paid expenses* involved PT practices, as the coverage provided for a PT practice is the primary source of insurance coverage for the corporation, its employees, and independent contractors.

Claims by Insurance Source for All Physical Therapy Professionals

(Chart reflects closed claims with paid indemnity of \geq \$10,000)

Insurance Type	Percentage of closed claims	Total paid indemnity	Average paid indemnity	Average paid expense	Average total incurred
PT practice	63.0%	\$29,297,441	\$84,188	\$24,524	\$108,712
Individually insured PT	35.7%	\$14,272,033	\$72,447	\$21,612	\$94,059
Individually insured PTA	1.3%	\$503,524	\$71,932	\$7,471	\$79,403
Overall	100.0%	\$44,072,998	\$79,842	\$23,268	\$103,111

DISTRIBUTION OF CLOSED CLAIMS BY SEVERITY

Of the 552 closed claims, approximately 80 percent were resolved with an indemnity payment under \$100,000. Only 0.4 percent incurred the policy limit of \$1 million. These claims reflect treatment that resulted in severe injury and irreversible harm to the patient.

The highest average paid indemnity resulted from closed malpractice claims that occurred in a hospital setting, while the highest total paid indemnity resulted from closed claims that occurred in offices or clinics.

ANALYSIS OF SEVERITY BY ALLEGATION

- Failure to properly test or treat the patient reflected the highest average paid indemnity (\$473,451), but accounted for only 0.8 percent of the PT closed claims.
- The most common allegations were improper performance using therapeutic exercise (26.6 percent), improper performance using a physical agent (17.4 percent), and failure to supervise or monitor (15.9 percent).

Risk Management Recommendations

The following strategies can help PTs and practices enhance safety while minimizing risk. This is only an overview of the five pages of recommendations contained in the full report.

- Communicate effectively with patients, families, and colleagues.
- Delegate patient therapy services only to the appropriate level of staff.
- Provide appropriate supervision for all delegated patient services.
- Adopt an informed consent process that includes discussion and demonstrates that the patient understands all the risks associated with the treatment.
- Ensure that clinical documentation practices comply with the standards promulgated by PT professional associations, state practice acts, and facility protocols.
- Avoid documentation errors that may weaken legal defense efforts in the event of litigation.
- Maintain clinical competencies specific to the relevant patient population.
- Be vigilant about protecting patients from the most common types of injuries.
- Recognize patients' medical conditions and co-morbidities that may affect therapy.
- Know and comply with state laws regarding scope of practice.

We recommend that you complete the Risk Control Self-Assessment Checklist for Physical Therapists to evaluate where your own clinical practices may include unnecessary risks.

PART 2

Healthcare Providers Service Organization's Analysis of Physical Therapy License Protection Paid Claims

(January 1, 2001 – December 31, 2010)

Any complaint filed against a physical therapist's or physical therapist assistant's license can have career-altering consequences.

An action taken against a PT or PTA's license to practice differs from a professional liability claim in that it may or may not involve allegations related to patient care and treatment. The amounts paid pursuant to license protection claims represent the cost of providing legal representation to the PT or PTA, rather than a settlement payment to a plaintiff.

ANALYSIS OF LICENSING BOARD OUTCOMES

- The largest proportion of license protection outcomes resulted in no action against the PT or PTA.
- License revocation accounted for 1.2 percent of the paid claims. These claims involved allegations of sexual misconduct and patient abandonment/neglect.

Percent of Claims by Licensing Board Outcome

Outcome	Percentage of Total	Outcome	Percentage of Total
Closed no action	44.1%	Public reproof	2.4%
Probation	17.6%	Consent agreement	1.8%
Suspension	7.1%	Advisory letter	1.2%
Fine	7.1%	Warning	1.2%
Continuing education	5.3%	License revocation	1.2%
Stipulation	3.5%	Letter of guidance	1.2%
Reprimand	2.9%	Censure	0.6%
Letter of concern	2.9%		

ALLEGATIONS BY CLASS

- The three most common allegations included improper management over the course of treatment (37.6 percent), inappropriate behavior (26.5 percent), and fraudulent billing (14.7 percent), which together accounted for 78.8 percent of the total paid claims.
- The average paid for inappropriate behavior (\$4,466) and fraudulent billing (\$4,209) was higher than the overall average paid (\$3,810).

PART 3

Highlights from Healthcare Providers Service Organization's 2011 Physical Therapist Work Profile Survey

(January 1, 2001 – December 31, 2010)

Below is a summary of the key findings from the 2011 PT survey regarding professional liability claims. You can view the complete survey at www.hpso.com/PTclaimreport2011.

SEEKING A PHYSICAL THERAPIST WITHOUT A REFERRAL

- Survey respondents who experienced claims were significantly more likely to work in states that required a referral (57.1 percent).
- The average paid claim was lower in states that did not require a referral (\$48,406) compared to those in states that did require a referral (\$55,657).

Seeking PT without a referral	PTs with no claims	PTs with claims	Average paid indemnity
My state did not require a referral to initiate treatment	61.2%	42.9%	\$48,406
My state required a referral to initiate treatment	38.8%	57.1%	\$55,657

LEVEL OF EDUCATION

- Average paid indemnity was directly correlated with level of education, with higher levels of education experiencing a higher average paid indemnity.

ASSISTANCE

- Nearly half of respondents with claims did not have anyone helping them at the time of the incident.
- Assistance from a physical therapy aide was associated with the highest average paid indemnity.

EMPLOYER DISCLOSURE POLICY

- Slightly more than half of PTs and PTAs who experienced claims reported their employer had a policy on error disclosure at the time of the incident, which was associated with a lower average paid indemnity.

SUPERVISION

- More than half of PTs and PTAs who experienced claims were supervising someone else.
- Supervising four or more individuals was associated with higher average paid indemnity.

ELECTRONIC RECORDS

- Using electronic medical records was associated with higher average paid indemnity.

RISK MANAGEMENT PLAN

- About half of respondents without claims reported that their organization had a risk management plan in place.
- When there was a claim, respondents who did not use the risk management plan experienced results with a much higher average paid indemnity.

For additional information, please contact CNA HealthPro at 1-888-600-4776 or www.cna.com. The information, examples and suggestions have been developed from sources believed to be reliable, but they should not be construed as legal or other professional advice. CNA and HPSO accept no responsibility for the accuracy or completeness of this material and recommend the consultation with competent legal counsel and/or other professional advisors before applying this material in any particular factual situation. Please note that Internet hyperlinks cited herein are active as of the date of publication, but may be subject to change or discontinuation. This material is for illustrative purposes and is not intended to constitute a contract. Please remember that only the relevant insurance policy can provide the actual terms, coverages, amounts, conditions and exclusions for an insured. Use of the term "partnership" and/or "partner" should not be construed to represent a legally binding partnership. All products and services may not be available in all states and may be subject to change without notice. CNA is a registered trademark of CNA Financial Corporation. Copyright © 2012 CNA. All rights reserved.

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